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DOCKET FILE COPY ORIGINAL

February 10, 2005

RECEIVED

FEB 10 2005

Federal Communications Commission
Office of Secretary

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D. C. 20554

Re: **Florida Cable Telecommunications Ass'n, Inc., et al. v. Gulf Power Co.;**
EB Docket No. 04-381

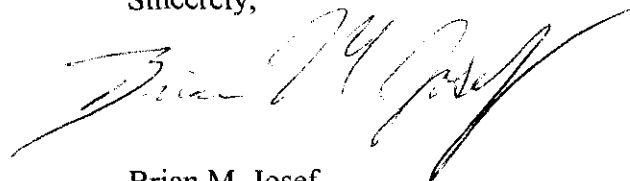
Dear Ms. Dortch:

Enclosed for filing in the above-captioned proceeding please find the original and six (6) copies of *Stipulation and Agreed Confidentiality Order*.

Also enclosed is a "**Stamp and Return**" copy of this filing which we ask be stamped with the FCC's date of filing and then returned to our messenger.

Thank you for your assistance.

Sincerely,



Brian M. Josef

Enclosures

cc: Service List

0+6

ORIGINAL

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

FEB 10 2005

Federal Communications Commission
Office of Secretary

FLORIDA CABLE
TELECOMMUNICATIONS ASSOCIATION,
INC., COX COMMUNICATIONS GULF
COAST, L.L.C., *et. al.*

Complainants,

v.

GULF POWER COMPANY,

Respondent.

E.B. Docket No. 04-381

To: Office of the Secretary

Attn.: The Honorable Richard L. Sippel
Chief Administrative Law Judge

STIPULATION AND AGREED CONFIDENTIALITY ORDER

The Florida Cable Telecommunications Association, Inc., Cox Communications Gulf Coast, L.L.C., Comcast Cablevision of Panama City, Inc., Mediacom Southeast, L.L.C., and Bright House Networks, L.L.C. ("Complainants"), and Respondent Gulf Power Company ("Gulf Power" or "Respondent"), by undersigned counsel, hereby request that the Court adopt the following stipulation as an Order of the Court governing confidentiality of materials produced in discovery in this proceeding in accordance with the Court's *Order* FCC 04M-41, released December 15, 2004, as follows:

WHEREAS, Complainants and Respondent will be reviewing and exchanging documents and other information in the course of discovery in this proceeding and sharing such documents and information with certain representatives of the Federal Communications Commission's Enforcement Bureau;

WHEREAS, each party has asserted that certain of the materials to be exchanged and reviewed should be used in this proceeding only and reviewed only by the parties' experts and consultants, but not be further disclosed as such constitute either (i) trade secrets and commercial, proprietary or financial information or (ii) critical energy infrastructure information that is privileged and confidential;

WHEREAS, the Court has preliminarily ordered that the parties treat exchanged documents and information as confidential in *Order* FCC 04M-41, released December 15, 2004 Part III, p.3 at footnote 5, until submission to the Court of a comprehensive confidentiality order for signing, and thereafter the parties will treat them as confidential in accordance with this Stipulation and Agreed Confidentiality Order ("Stipulation and Order");

WHEREAS, at the commencement of the complaint proceeding brought by Complainants against Respondent the parties executed a comprehensive confidentiality agreement that forms the basis for this Stipulation and Order; and

WHEREAS, the parties jointly request the Court to adopt this Stipulation and Order as an Order in this proceeding in furtherance of the Court's direction in the December 15th Order.

THE PARTIES DO HEREBY STIPULATE AND AGREE AS FOLLOWS:

1. Definitions.

- a. **Authorized Representative.** "Authorized Representative" shall have the meaning set forth in Paragraph Four.
- b. **Commission.** "Commission" means the Federal Communications Commission or any arm of the Commission acting pursuant to delegated authority including the Presiding Officer in EB Docket No. 04-381, but not the Enforcement Bureau.
- c. **Confidential Information.** "Confidential Information" means (i) information or materials required to be provided under the Commission's rules and regulations and orders of the Presiding Officer in EB Docket No. 04-381; and (ii) information or materials submitted by a Submitting Party (as defined herein under Section (1)(f)) in EB Docket No. 04-381 and as claimed by Florida Cable Telecommunications Association, Inc., Cox Communications Gulf Coast, L.L.C., Comcast Cablevision of Panama City, Inc., Mediacom Southeast, L.L.C., Bright House Networks, L.L.C. or by Gulf Power

Company. Confidential Information includes additional copies of and materials or information derived from Confidential Information.

- d. **Declaration.** "Declaration" means Attachment A to this Stipulation and Order.
 - e. **Reviewing Party.** "Reviewing Party" means a person or entity participating in this proceeding, including the Enforcement Bureau.
 - f. **Submitting Party.** "Submitting Party" means a person or entity that seeks confidential treatment of Confidential Information pursuant to this Stipulation and Order.
2. **Claim of Confidentiality.** The Submitting Party may designate information as "Confidential Information" consistent with the definition of that term in Paragraph 1 and the declassification provision in Paragraph 5 of this Stipulation and Order.
3. **Procedures for Claiming Information is Confidential.** Confidential Information submitted to the Reviewing Party shall bear the following designation (or substantially similar language) on the front page in bold print: "Confidential – Business Proprietary Information - EB Docket No. 04-381." Confidential Information shall be segregated by the Submitting Party from all non-confidential information. To the extent a document contains both Confidential Information and non-confidential information, the Submitting Party shall appropriately designate the specific portions of the document claimed to contain Confidential Information and shall, where feasible, also submit a redacted version not containing Confidential Information.
4. **Permissible Disclosure of Confidential Information To Authorized Representatives.**
- (a) Authorized Representatives shall be limited to:
 - (1) Counsel of record representing a Reviewing Party in this proceeding and any legal support personnel (*e.g.*, paralegals and clerical employees) employed by such attorneys.
 - (2) Employees, officers, or directors of a Reviewing Party who have not been, are not currently, and do not reasonably expect to be involved in the marketing of electricity distribution services or all lawful communications services to end users, provided that such employees, officers, or directors are under the supervision of counsel of record.
 - (3) Consultants, experts or witnesses retained by a Reviewing Party, who have not been, are not currently, and do not reasonably expect to be involved in the marketing of electricity distribution services or all lawful communications services to end users by that Reviewing Party or by a direct competitor of any Reviewing Party, provided that such consultants, experts or witnesses are under the supervision of counsel of record.
 - (b) Persons obtaining access to Confidential Information under this Stipulation and Order shall not disclose information designated as Confidential Information to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than in prosecuting this proceeding before the Commission or any Commission staff member, or before any reviewing court. This limitation, however, shall not be read as limiting any Authorized Representative seeking access to Confidential Information under this Stipulation and Order from separately

seeking access to Confidential Information for use in another proceeding through means appropriate for and/or applicable to that other proceeding. Before any Authorized Representative is provided access to Confidential Information pursuant to Sections (a)(1), (a)(2), or (a)(3) of this paragraph, that Authorized Representative must first sign a Declaration stating that the Authorized Representative has personally reviewed this Stipulation and Order and understands and agrees to be bound by the limitations it imposes on the Authorized Representative and provide that signed Declaration to counsel for the Submitting Party. The form of the Declaration to be used is Attachment A to this Stipulation and Order.

(c) No copies or notes of materials marked Confidential Information may be made except copies or notes to be used by persons designated in paragraph (a) of this section. Any Authorized Representative may copy any Confidential Information unless it bears the legend "Copying Prohibited." Any Authorized Representative may request permission from the Submitting Party to copy any Confidential Information that bears the legend "Copying Prohibited." Each Authorized Representative must maintain a written record of any copies made of Confidential Information and provide this record to the producing Party upon reasonable request. Each Authorized Representative having custody of any Confidential Information shall keep the documents properly secured at all times.

(d) Within 60 days of termination of this proceeding, including all appeals and petitions, all originals and reproductions of any Confidential Information, shall be returned to the Submitting Party or destroyed.

5. Declassification. A Reviewing Party or Authorized Representative may apply to the Presiding Officer in EB Docket No. 04-381 for a ruling that documents or categories of documents, stamped or designated as Confidential Information, are not entitled to such status and protection. The Submitting Party or other person that designated the document as Confidential Information shall be given notice of the application and an adequate opportunity to respond. To maintain confidential status, the proponent of confidentiality must show by a preponderance of the evidence that the materials fall within an exemption to disclosure contained in the Freedom of Information Act, 5 U.S.C. § 552(b)(1)-(9) or other governmental exemption from disclosure, or are subject to existing nondisclosure obligations to a third party. This Stipulation and Order is not intended to constitute a resolution of the merits concerning whether any Confidential Information would be released publicly by the Commission upon a proper request. *See* 47 C.F.R. §§ 0.459, 0.461. Such a resolution shall be made consistent with and in accordance with the terms of this paragraph 5.

6. Copies of Confidential Information. The Submitting Party shall provide a copy of the Confidential Information to Authorized Representatives upon request and may charge a reasonable copying fee not to exceed twenty five cents per page. Authorized Representatives may make additional copies of Confidential Information but only to the extent required and solely for the preparation and use in this proceeding. Authorized Representatives must maintain a written record of any additional copies made and provide this record to the Submitting Party upon reasonable request. The original copy and all other copies of the Confidential Information

shall remain in the care and control of Authorized Representatives at all times. Authorized Representatives having custody of any Confidential Information shall keep the documents properly secured at all times.

7. Filing of Declaration. Counsel for Reviewing Parties shall provide to the Submitting Party a copy of the attached Declaration for each Authorized Representative within five (5) business days after the attached Declaration is executed.

8. Subpoena by Courts or Other Agencies. If a court or other administrative agency subpoenas or orders production of Confidential Information which an Authorized Representative has obtained under the terms of this Stipulation and Order, such Authorized Representative shall promptly (within two (2) business days) notify the Submitting Party (or other person who designated the document as confidential) of the pendency of such subpoena or order to allow that party time to object to that production or seek a protective order.

9. Client Consultation. Nothing in this Stipulation and Order shall prevent or otherwise restrict counsel for Reviewing Parties from rendering advice to their clients and, in the course thereof, relying generally on examination of Confidential Information, provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure of or reference to any Confidential Information except under the procedures of paragraph 5 above.

10. Use. Reviewing Parties or Authorized Representatives obtaining access to Confidential Information under this Stipulation and Order shall use the information only for preparation of and filings in this proceeding and any related appeals or review proceedings, and shall not use such information for any other purpose, including business or commercial purposes, or governmental or other administrative or judicial proceedings. The prior sentence shall not, however, be read as limiting any Reviewing Party or Authorized Representative obtaining access to Confidential Information under this Stipulation and Order from separately seeking access to Confidential Information for use in another proceeding through means appropriate for and/or applicable to that other proceeding. Any Reviewing Party or Authorized Representative may, in any pleadings that they file in this proceeding, reference the Confidential Information, but only if that Authorized Representative complies with the following procedures:

(a) Any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings;

(b) The portions containing or disclosing Confidential Information must be covered by a separate letter referencing the Stipulation and Order in this proceeding;

(c) Each page of any Reviewing Party's filing that contains or discloses Confidential Information subject to this Stipulation and Order in this proceeding must be clearly marked: "CONFIDENTIAL -- SUBJECT TO PROTECTIVE CONDITIONS IN EB DOCKET NO. 04-381 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION;" and

(d) The Confidential portion(s) of the pleading, to the extent they are required to be served, shall be served upon the Secretary of the Commission and the Submitting Party. Such Confidential portions shall be served under seal. They shall not be placed in the Commission's Public File unless the Commission directs otherwise (with notice to the producing party and an opportunity to comment on such proposed disclosure). Any Reviewing or Submitting Party filing a pleading containing Confidential Information shall also file a redacted copy of the pleading containing no Confidential Information, which copy shall be placed in the Commission's public files. Any Reviewing or Submitting Party may provide courtesy copies of pleadings containing Confidential Information to Commission staff so long as the notation required by subsection (c) of this paragraph is not removed.

11. No Waiver of Confidentiality. Disclosure of Confidential Information as provided herein shall not be deemed a waiver by the Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing Parties, by viewing these materials: (a) agree not to assert any such waiver; (b) agree not to use information derived from any confidential materials to seek disclosure in any other proceeding; and (c) agree that accidental disclosure of Confidential Information shall not be deemed a waiver of any privilege.

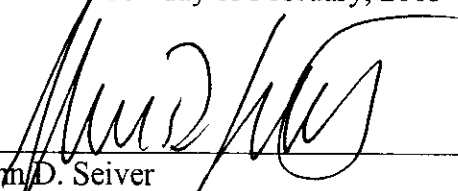
12. Violations of Stipulation and Order. Should a Reviewing Party or Authorized Representative that has properly obtained access to Confidential Information under this Stipulation and Order violate any of its terms, it shall immediately convey that fact to the producing party. Further, should such violation consist of improper disclosure or use of Confidential Information, the violating party shall take all necessary steps to remedy the improper disclosure or use. The violating party shall also immediately notify the Submitting Party, in writing, of the identity of each individual known or reasonably suspected to have obtained the Confidential Information through any such disclosure. Nothing in this Stipulation and Order shall limit any other rights and remedies available to the Submitting Party at law or equity against any Reviewing Party or Authorized Representative using Confidential Information in a manner not authorized by this Stipulation and Order.

13. Non-Termination. Unless otherwise ordered by the Commission or a court of competent jurisdiction, within sixty (60) days after final resolution of this proceeding (which includes any administrative or judicial appeals), Authorized Representatives and Reviewing Parties shall destroy or return to the Submitting Party all Confidential Information as well as all copies and derivative materials made, except that counsel to a Reviewing Party may retain two (2) copies of pleadings submitted on behalf of the Reviewing Party and other attorney work product. Any Confidential Information contained in any copies of pleadings retained by counsel to a Reviewing Party or in materials that have been destroyed pursuant to this paragraph shall be protected from disclosure or use indefinitely in accordance with this Stipulation and Order unless such Confidential Information is released from the restrictions of this Stipulation and Order through agreement of the parties.

14. **Responsibilities of Parties.** The Reviewing Parties and Submitting Party are responsible for employing reasonable measures to control, consistent with this Stipulation and Order, duplication of, access to, and distribution of Confidential Information.

15. **Effect of Stipulation and Order.** This Stipulation and Order constitutes an agreement between the Reviewing Party or Authorized Representative, executing the attached Declaration, and the Submitting Party.

Dated this 10th day of February, 2005


John D. Seiver

Brian M. Josef

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Counsel for Respondent

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION¹

Richard L. Sippel
Chief Administrative Law Judge

¹
Courtesy copies of this *Order* were transmitted to counsel for each of the parties by e-mail on the date of issuance.

ATTACHMENT A

DECLARATION

I, _____, hereby declare under penalty of perjury that I have personally reviewed the Stipulation and Agreed Confidentiality Order in EB Docket No. 04-381, and that I agree to be bound by its terms pertaining to the treatment of Confidential Information submitted by parties to this proceeding. I understand that the Confidential Information shall not be disclosed to anyone except in accordance with the terms of the Stipulation and Agreed Confidentiality Order and shall be used only for purposes of the proceedings in this matter. I acknowledge that this Stipulation and Agreed Confidentiality Order is a binding agreement with the Submitting Party.

(printed name)
(representing) -----
(title) -----
(employer) -----
(address) -----
(phone) -----
(date) -----

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Stipulation and Agreed Confidentiality Order* has been served upon the following by electronic mail, telecopier and U.S. Mail on this the 10th day of February, 2005:

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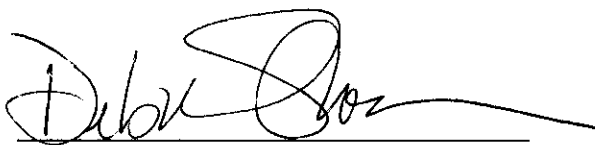
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